



February 20, 2020

VIA CM/ECF ONLY

Hon. Judge Glenn T. Suddaby
Northern District of New York
Federal Building and US Courthouse
PO Box 7367
Syracuse, NY 13261

Re: **Spero v. VSCD et al.**
Civil Action No: 3:17-CV-0007

Dear Judge Suddaby:

We are writing to request the remaining issues in the above referenced case be decided by a jury pursuant to Rule 39(b) of the Federal Rules of Civil Procedure. The failure to demand a jury trial within ten days of the close of pleadings generally waives ones right to a trial by jury. *See* Fed. R. Civ. Pro. 38 (b) & (d). However, the trial court has broad discretion in deciding on whether to grant a late jury trial request. *See* Fed. R. Civ. Pro. 39(b); *see also* *Cascone v. Ortho Pharm. Corp.*, 702 F.2d 389, 392 (2d Cir. 1983).

After considering the matters discussed at the pre-trial conference, we agree with the Court that the sole claim left is a factual determination that would be best decided by a jury. After consultation with our client, Plaintiff respectfully requests this matter be set for a jury trial should mediation not be successful in resolving it. We have consulted with Defendants' counsel and while they do not join our request, Mr. Spagnoli indicated they will not oppose it. Thank you kindly for your attention to this matter.

Respectfully submitted,

____S/Willa S. Payne_____
Willa S. Payne, Esq.
Staff Attorney

cc:
Charles Spagnoli, Esq.